record there must be material upon which the court could exercise its discretion, for otherwise a party in breach could have an unqualified right to an extension of time which would defeat the purpose of the rules which was to provide a timetable for the conduct of litigation.

However, the point before this court is that the condition in respect of deposit has not been complied with within the stipulated time. In our view, if the statutory condition has not been fulfilled the court has no power to grant an extension of time. Appellant has not convinced us that the Government is exempted from rule 7. In fact, the Government has always complied with rule 7. Under rule 7(a) the maximum period for providing security is three months and the court has no power to extend time. The observations of Jenkins C.J. in *Kerridge* v. *Lamdin*[5] apply aptly to this situation: —

"One reaches a conclusion of this kind with some regret, for it is never very satisfactory that a possibly meritorious claim should be excluded merely because the claimant has inadvertently allowed time to expire; but, where a statute confers a right and stipulates that it must be exercised within a prescribed period, that period must be observed; and, in the absence of any provision in the Act allowing the time limit to be relaxed, failure to observe the prescribed period must inevitably be fatal to the claim."

We would therefore refuse this application with costs.

Application refused.

Solicitors: *Ee & Lim.*

GOVERNMENT OF STATE OF PAHANG v. TENGKU ABDUL AZIZ & ANOR.

[F.C. (Lee Hun Hoe C.J. (Borneo), Ong Hock Sim and Chang Min Tat F.JJ.) November 15, 1977 and March 4, 1978]
[Kuala Lumpur — Federal Court Civil Appeal No. 112 of 1977]

Practice and Procedure — Application for leave to amend statement of defence — Dismissed by judge in chambers — Counsel applying in open court to appeal against decision in chambers — Hearing of action stayed — R.S.C. 1957, O.54 r.22A and O.70 r.1 — Courts of Judicature Act, 1964, s.68(2).

This was an appeal for the dismissal of an application for leave to amend the Statement of Defence by pleading section 9(1) of the Limitation Act 1953 as a bar to the claim of the respondents as their action was commenced after the expiration of twelve years from the date on which the right of action accrued. The application had been made in Chambers and had been dismissed but subsequently the appellant's counsel said in open court that he wished to appeal against the decision in Chambers and asked that the hearing of the action be stayed. At the hearing of the appeal counsel for the respondents raised the preliminary objection that Order 54 rule 22A and section 68(2) of the Courts of Judicature Act, 1964 have not been complied with.

Held: (1) the appellant should be given leave to amend. No party had been taken by surprise or prejudiced by reason of the application. The application did not deny the respondent's right to pursue the action. Dismissal however would deny the appellant a defence which was clearly open to them;

(2) justice would not be served by acceding to the objections on technicalities for non-compliance with Order 54 rule 22A. The proceedings could be validated under the recent amendment to Order 70 rule 1 of the Rules of the Supreme Court.

Case referred to:-

(1) *T.O. Thomas* v. *K.C.I. Reddy & Anor.* [1974] 2 M.L.J. 87, 92.

FEDERAL COURT.

Lim Beng Choon (Senior Federal Counsel) for the appellant.

H.L. Tennakoon for the respondents.

Ong Hock Sim F.J. (delivering the judgment of the Court): This is an appeal from the dismissal of an application for leave to amend the statement of defence by pleading section 9(1) of the Limitation Ordinance 1953 as a bar to the claim of the respondents as their action was commenced after the expiration of twelve years from the date on which the right of action accrued.

It is the claim of the respondents that by a document made in A.H. 1304 (1884 A.D.), the then Sultan of Pahang made a gift of certain lands being the basin of the Sungei Rompin and its tributaries from their sources to their mouths to the ancestors of the respondents. It is not necessary in this appeal to refer to the reliefs claimed. The only issue is whether the amendment should have been refused.

On April 27, 1977, the day fixed for hearing of Civil Suit No. 9 of 1974, the Legal Adviser, Pahang applied to amend the statement of defence, in terms of a Summons-in-Chambers filed on April 23, 1977. Page 18 indicated this was taken up in Open Court on April 27, 1977 and adjourned to the following day, April 28. The note at page 19 seemed to show that the application was referred back to the Judge in Chambers, when arguments were heard and then deferred to the following day for decision. On April 28, the brief note recorded that the application was dealt with in Chambers and dismissed. That same day, page 21 of the Record, noted that in Open Court, with both counsel present, the appellant's counsel said he wished to *appeal against the decision in Chambers* and "asks that the hearing of the action be stayed until the disposal of the appeal." His application for stay was supported by counsel for the respondents. The learned judge in his judgment observed that the necessity for the amendment should have been abundantly clear to any ordinary practitioner from the moment the action was filed and overlooking sections 38 and 39, matters "essentially within the working knowledge of the ordinary practitioner" was inexcusable. By such conduct and laches, he deemed the appellant had acquiesced in the action and waived the privilege to plead the statute and is now estopped from invoking the plea. We regret that both counsel failed to draw the attention of the learned judge to Order 54 rule 22A and to act in accordance therewith. It is obvious there has been indifference on all sides to the Rules of the Supreme Court. Counsel for the respondent now seeks to take advantage of this non-observance, for which, in our view, he must accept some responsibility when he agreed to a stay of the action. We incline to the view that justice would not be served by acceding to objections on technicalities for non-compliance with Order 54 rule 22A. We agree with learned counsel for the appellants that the recent amendment to Order 70 rule 1 would validate

the proceedings. No party was taken by surprise or prejudiced by reason of the application. That application did not deny the respondents' right to pursue their action. Dismissal, however, denies the appellant a defence which is clearly open to them. Counsel for the respondents based his preliminary objection in reliance upon Order 54 rule 22A and section 68(2) of the Courts of Judicature Act 1964. It is true that the Record does not show compliance with either. The judgment is at pages 22-26 and the order at page 27 is purported to have been made "In Open Court." We would say we agree with what Gill C.J. said in *T.O. Thomas* v. *K.C.I. Reddy & Anor.*:—[1]

"Reading subsection (2) of section 68 of the Act in conjunction with rule 22A, it would seem clear that leave to appeal is not required either if the judge issues a certificate that he requires no further argument or hears arguments in court and proceeds to make an order. The absurdity of the argument that leave is required even after a judge has made an order in court on reconsidering the matter after hearing further arguments lies in the fact that such reconsideration would thus not be considered even on par with a mere certificate that no further arguments are required for the purpose of such reconsideration."

We would allow the appeal and set aside the order refusing leave to amend. The appellant is given leave to amend subject to paying costs occasioned thereby. We make no order on the costs of this appeal.

Appeal allowed.

Solicitors: *Tennakoon, Selva & Co.*

PUBLIC PROSECUTOR v. ZAKARIA BIN ISA

[F.C. (Suffian L.P., Gill C.J. (Malaya), Lee Hun Hoe C.J. (Borneo), Raja Azlan Shah and Wan Suleiman F.JJ.) January 23 and March 20, 1978]

[Kuala Lumpur — Federal Court Criminal Appeal No. 65 of 1977]

Criminal Law and Procedure — Cautioned statement by accused — When admissible under Internal Security Act — Admissibility under Criminal Procedure Code — Internal Security Act, 1960, s. 75 — Criminal Procedure Code (F.M.S. Cap. 6), s. 113.

In this case the accused had been acquitted on charges under section 7(1) of the Firearms (Increased Penalties) Act and section 10 of the Arms Act. On the appeal the Public Prosecutor asked for a ruling on whether a cautioned statement by an accused person under these two Acts is admissible under section 75 of the Internal Security Act. The learned judge had held that it was not and that instead section 113 of the Criminal Procedure Code applied.

Held: (1) a cautioned statement is admissible under section 75 of the Internal Security Act where a person is charged with an offence under the Internal Security Act itself and also where he is charged with an offence against any written law specified in the Second Schedule to the Act;

(2) as the Firearms (Increased Penalties) Act is specified in the Second Schedule of the Internal Security Act, the cautioned statement if it satisfied all the necessary conditions would have been admissible under section 75 of the Internal Security Act; if it satisfied all the necessary conditions in section 113 of the Criminal Procedure Code, it would have been admissible under that section also;

(3) the offence under section 10 of the Arms Act is not specified in the Second Schedule of the Internal Security Act, and therefore the cautioned statement would not have been admissible under section 75 of the Internal Security Act; it would however have been admissible under section 113 of the Criminal Procedure Code, which applies to all cases, be they security cases or otherwise;

(4) as the learned judge had found that the cautioned statement was made under duress and so inadmissible, the appeal against acquittal must be dismissed.

Case referred to:-

(1) *Chong See Leong* v. *Public Prosecutor* [1948-49] M.L.J. Supp. 56.

The following authorities were also cited in argument: *Mohd. Yatim bin Abu Bakar* v. *Public Prosecutor* [1950] M.L.J. 57, *Hassan* v. *Public Prosecutor* [1962] M.L.J. 323, *Ong Kiang Kek* v. *Public Prosecutor* [1970] 2 M.L.J. 283 and *R.* v. *Aves* [1950] 2 All E.R. 330.

FEDERAL COURT.

Mohamed Noor bin Haji Ahmad (Deputy Public Prosecutor) for the appellant.

Datuk Wan Mustapha for the respondent.

Wan Suleiman F.J.: The judgment of the court which I am about to read has been written by the Lord President.

Suffian L.P. (read by Wan Suleiman F.J.): The accused was charged under section 7(1) of the Firearms (Increased Penalties) Act and section 10 of the Arms Act.

He was acquitted by the learned judge, and the Public Prosecutor appeals to us.

There were four grounds of appeal, but at the hearing the Public Prosecutor abandoned three of them and asked us to consider only one ground. The point of law we are asked to rule on is whether a cautioned statement made by an accused charged under these two Acts is admissible under section 75 of the Internal Security Act ("ISA"). The learned judge held that it was not and that instead section 113 of the Criminal Procedure Code applied.

Subsection (1) of section 75 of ISA provides:

"Where any person is charged with any offence against this Act or against any written law for the time being specified in the Second Schedule any statement [which satisfies the conditions set out in the section] shall, notwithstanding anything to the contrary contained in any written law, be admissible at his trial in evidence...."

It will be noticed that such a statement is admissible in two cases:

(a) where a person is charged with an offence under ISA; and

(b) where he is charged with an offence against *any written law specified in the Second Schedule.*

The Firearms (Increased Penalties) Act is specified in the Second Schedule of ISA — see P.U.(B) 336/75 which did not appear to have been brought to the attention of the learned judge. So in our judgment, the cautioned statement, if it satisfied all the necessary conditions, would have been admissible under section 75(1) of ISA in respect of the charge under that Act. Similarly, if it satisfied all the necessary conditions in section 113 of the Criminal Procedure Code, it would have been admissible under that section also.

In our view, the learned judge was in error in thinking that a cautioned statement was admissible